

HAINS DEFENCE OUTLINED

MAN CAN'T HIDE BEHIND LUNATIC'S ACT, COURT RULES.

Spelling One Plan to Clear T. J. Hains—Conceded in Opening Says Defendant Tried to Keep Brother From Meeting Annis—Prosecutor a Witness.

In line with the contrivances which so far has characterized the Hains trial in Flushing, in which for example the closing days of the prosecution were devoted to helping out the defence, the latter at its opening day yesterday received what appeared to be rather a hard blow in the form of a ruling by Justice Crane.

Eugene N. L. Young of counsel for the defence, in his formal application for the dismissal of the indictments against T. J. Hains, had raised the contention that in case Capt. Peter C. Hains, Jr., who did the actual shooting of Annis, should be adjudged insane and that therefore he had committed no crime for which he could be held responsible, Thornton Hains could not be held as an accessory. Justice Crane, interrupting, said:

"This man may be guilty of murder in the first degree as a proposition of law, although the man who held the revolver was insane and so was not guilty of murder. I may say to the jury now that this man is being tried for his own acts and designs and not for the acts or designs of any other."

Mr. Young continued his argument with the contention that failure to interfere in the commission of a crime is no proof of guilt. In this the Court agreed with him, but added this qualification:

"Previous acts and declarations may, however, be taken in connection with non-interference as proof of a criminal design. Also, a subsequent declaration of gratification at the act itself may not be taken as evidence of complicity on the part of an alleged accomplice, but it may be considered along with his acts and declarations previous to and at the time of the commission of the crime."

"I will say further at this time," the Court continued, "that a man may be guilty of a murder committed by a lunatic and aided and encouraged it knowingly and intentionally. A man who is present at the commission of a crime and who, knowing the act and its consequences, aids and abets it; in my opinion is not an accessory under the common law, but a principal."

On the other hand the Court made rulings which in the stated opinion of the lawyers for the defence opens up the whole story of the matters leading up to the tragedy as well as paves the way for bringing Capt. Hains's mental condition before the present jury. In this direction Justice Crane said in effect that he would not permit the introduction of any evidence tending to show the relations of William E. Annis with Mrs. Peter C. Hains, Jr., but that he would accept anything that was told to either the defendant or his brother. "This is admissible as evidence of Capt. Hains's sanity and also as showing or tending to show with what motive the defendant went to Bay Side," he said.

After Mr. Darrin had formally declared the People's case in and Mr. Young's motions to dismiss the indictments had been denied, Joseph A. Shay opened the defence's case. He spent considerable time in unexplained pathos.

At the outset Mr. Shay ran up against the District Attorney's objections, sustained by Justice Crane, against his characterization of the prosecution's testimony as "false, biased, prejudiced, contradictory, suspicious and doubtful." He struck the same snag when he attacked the hiring of James W. Dayton, a member of the yacht club, to assist Mr. Darrin in the prosecution of the Hains brothers.

Mr. Shay said that the defendant was born in Washington in 1866 and told of Gen. Hains's war record. After mentioning Thornton Hains's early life he said that he was married in 1896 and told of his child's deformity and his care of her, incidentally remarking that the defence would prove that the little girl was the innocent cause of her father's present predicament, since, according to the defendant's story, he went to Bay Side to see about buying a plot of ground on which to build a home near the water for the sake of the child's health.

When he got down to cases, Mr. Shay told of the defendant's meetings and conversations with Jespersen, the real estate agent, as related by Jespersen when so strangely called by the District Attorney. Bugge, Jespersen's partner in a way, met Thornton Hains, the defence will try to show, and sought to interest him in a plot of ground near the Bay Side Yacht Club known as the "Turtle property." Thornton Hains did not go to look over the lot at Douglas Manor which Mr. Jespersen had for sale or those at Bay Side in which Mr. Bugge was interested, and when asked the reason by Jespersen told the real estate man that his brother was in great trouble and that he had been obliged to stay and look after him.

He promised, however, Mr. Shay continued, "that as soon as things cleared up he would take Jespersen in his automobile and go down there. Jespersen agreed, but told him to try to make it a Saturday or Sunday for either place. The defendant understood from his conversation with Mr. Bugge that Mr. Jespersen was a member of the yacht club."

"Now among the friends and acquaintances of the defendant was a gentleman who will be called here as a witness, who was engaged in the business of concrete mixing and this man and the defendant had agreed that when Hains had found a suitable lot the other would build him a concrete house."

On the 15th of August the defendant, accompanied by his deformed brother, left his home in Bay Ridge to go to Fort Hancock, at Sandy Hook, where their father and mother lived. He reached the New York side of the Brooklyn Bridge and by the peculiar hand of fate met his friend the concrete man, who was on his way from his office in Park row to the new terminal under construction at the bridge, where one of the concrete mixers (in which the Hains family is interested) was being used. Thornton Hains said to this friend, "Come on, old man, I've got you've got to come with us—I'm taking Peter down to the docks. We're going down in the boat from Liberty street and we'll come back in the motor boat."

His motor boat, Mr. Shay explained, was "most dangerous affair, about thirty feet long and only four feet wide," with a gasoline engine of high power. The lawyer also took occasion at the same time to explain why Thornton Hains had a revolver strapped around his waist that afternoon.

"It was an old gun of small calibre and old fashioned variety," Mr. Shay said, "one that he had owned for twenty-five years but only carried on his boat trips. You can well understand how he would use it as a signal of distress in case of necessity and also at any time should the boat run out of gasoline at night or in the danger attendant on their putting in a home where infested with thieves or river rascals for self-protection."

"That the Captain ever had a revolver with him on these occasions and on this occasion beyond Thornton Hains's wildest imagination, for on account of the condition of the Captain, as we will show you, the utmost care was exercised to keep from him any weapon which might be

dangerous to his own life. This defendant believed that he had left his revolver at San Francisco with his equipment."

Mr. Shay then continued his story, saying that the friend, believing the return by motor boat dangerous, tried to dissuade the defendant and his brother from making the trip as the three were walking toward the ferry, and so much time was taken up with talking the matter over that they missed the boat. The friend then suggested that they go down to Long Island and see the lot. "This is a fine day," said the friend, "and if you make a bargain we'll start the house going and you'll have it done by fall. I'll go with you." Thornton Hains accepted the suggestion and they started off.

"The Captain was in an unconcerned mood, not taking part in any conversation and acting as if dazed," so the lawyer said. They all stopped at the Waldorf for luncheon, the friend and Thornton took a seat at a table, while the Captain sank into a chair in the hall alongside the dining room. He could not be persuaded to eat. Luncheon finished, they started for the ferry. At the ferry the friend found out from a time table that they could not get back until late and backed out.

"Go ahead, Thornton," he said, "my wife will wonder where I am. You go and look them over and we'll meet tonight." An appointment was made for dinner at the Hotel Astor at 8 o'clock. The friend and Thornton were purchased by Thornton Hains and 150 found them at the railroad station at Bay Side.

Mr. Shay then switched off from the events of the day of the shooting to tell about Capt. Hains's affairs—"to show you that on that eventful day Capt. P. C. Hains was a madman, and the causes which created that condition and how it came about that he was with this defendant at that time."

"Capt. Hains was married in 1900," he said, "while on duty at Fort Banks, Massachusetts. After his marriage he was stationed at various places under government orders. He deeply loved his wife and their three children. In September of last year he was ordered to leave his family at Fort Hamilton and go on board a government transport at San Francisco sailing for the Philippines. At first the thought of leaving his family for an indefinite period so worked upon the poor fellow that he demurred and had it not been for his wife and family would have resigned. It does seem strange how soon one can be forgotten by a faithful wife."

Mr. Darrin objected to this sort of talk and Justice Crane ruled that what Annis did or did not do was not relevant, but that the fact that the defendant was a brother—that the truth or the falsity of the things told them made no difference and could not be proved. So Mr. Shay for the most part confined the remainder of his speech to this ruling.

"It was told this defendant and his brother," Mr. Shay went on, "that the relationship between this disgraced woman and her husband was such that she was an abortion until an abortion was necessary."

"It seems that the wife while in a drunken condition perhaps once or twice told her husband that she was not his wife and all her letters were sent in a large packet addressed to San Francisco. When the Captain reached that port he found them, but without waiting for leave of absence broken in spirit, he came East. The wife confessed all, and the terrible condition of affairs was communicated to him by servants and others. The strain of his work and the work of him to such an extent that this was too much to bear. He was a madman."

"Old General and Mrs. Hains observed his breakdown and calling upon him directed him to look after 'Connie.' 'Don't leave him,' they said to Thornton, 'be always with him. Take him away and try to help him to forget.'"

The Court considered and said that the trips in the motor boat with their attendant excitement seemed to do the Captain good. He continued:

"Divorce proceedings were begun in the early part of June, and on August 12, three days before the shooting, an answer to the proceedings from the Captain's wife was served upon him. In that answer the wife charged the husband with having compelled her through the eight years of their married life to submit to unnatural practices. If there had been a chance of the Captain's recovering his reason before it seemed to be completely shattered now."

Mr. Shay then returned to the events of August 15.

"No inquiry was made for Annis," he said. "The boy was asked how far the club was, and Thornton mentioned going down to see a real estate man. No other conversation was held either with the boy or between the defendant and his brother. The defendant had no recollection of the yacht club stage and nothing was said to the driver relative to it. When the clubhouse was reached he asked the boy to wait, saying that he would be back soon. The defendant left the survey and his brother, the Captain, remained in it. He probably did not stay in the survey long, for he seemed to follow the defendant into the clubhouse."

The defendant approached a man and asked for Jespersen. He was informed that there was no such man there and, surprised, said, "Why, he is with the Rickett-Findlay company." The name Annis was not mentioned. The man with whom he spoke was a colored man, but the defendant does not recognize the witness Ellison. The defendant then spoke with Mr. Birchfield and asked him about Jespersen. Birchfield apparently did not know Jespersen, but he spoke of certain properties that were near the clubhouse and mentioned the name of Storm.

He told the defendant that Storm was probably down around the boat. Looking around the defendant saw his brother wandering toward the dock, and excusing himself to Birchfield, he started down behind his brother.

"When the dock was reached the defendant at the gangway met a man whom he does not know and asked him if he knew a man by the name of Jespersen. The man seemed to be in a hurry and told the defendant he did not know Jespersen but to go down to the boat—he might be down there. The defendant continued on down to the end of the dock, where he met Funke and spoke to him about real estate and again asked for Jespersen. Storm stood on the boat below and the defendant spoke down to him."

"The Captain was pacing back and forth with his arms folded apparently absorbed in thought and paying no attention to what was taking place. Soon Birchfield came down to the dock and joined in the conversation which still was about real estate and Jespersen, and then somebody whom the defendant believes to have been Birchfield, turned and bowed to a woman standing on the south side of the dock and in a loud voice said: 'How do you do, Mrs. Annis?' The defendant, somewhat staggered by the name, asked: 'What is that?' Birchfield or Funke replied, 'Why, Billy Annis's wife.' The defendant asked: 'Billy Annis of Recreation?' And when they said 'Yes' he asked if Annis was there."

"Why, yes, he's out there in the boat; he's going to sail a race to-day. Here he comes now."

Thornton, realizing that a sight of Annis to his brother would probably mean the undoing of his mental improvement determined to get his brother away. He turned to his brother and taking him by the arm said: 'Come on, Peter, Jespersen isn't here. Let's go back.' The Captain shook himself from the defendant and instantly Birchfield ran down the gangplank, the boat being then in motion. Thornton did not recognize Annis, who was in a bathing suit and, still on the dock, was struck by the sudden disappearance of his brother. Instantly there was a rattle of shots.

"The Captain was behind the sail. Thornton, the boatman, was at his side, and striking the revolver from his hand, plinked his arms and with his right hand raised was about to strike him. Thornton Hains cried out: 'Don't hurt him, he's my brother!' and came rushing down the gangplank."

"Roberts picked up the pistol and, as he was raising it and pointing it at the Captain, Thornton drew his revolver and shouted, 'Don't shoot—keep back—he'll kill you!' Gettysburg shot at the Captain. He waved the revolver about his head, shouting to the people to get an officer

while cries of 'Kill him! Lynch him!' were going on all about him."

Tonning stepped away. Thornton and Roberts both held their revolvers down to their sides, and Thornton took hold of his brother's arm, still saying to get an officer—he would arrest his brother."

Mr. Shay said that later the defendant might have killed you, and to stress, 'If you had a brother wouldn't you protect him?' and explained that this latter remark referred not to coming down from the city but from the dock where they saw the Captain threatened by Tonning. Most of the statements attributed to Thornton Hains by the witnesses for the prosecution, the defence's lawyer declared, were not said. Mr. Shay said that the defence would prove that every shot was discharged before Thornton was even on the boat; that he did not draw his revolver until Roberts pointed the Captain's pistol at the Captain; that the defendant not only said, 'I am as sorry for this as you are,' but also, 'God knows I tried to keep him from meeting this man.' 'We'll show you,' declared Mr. Shay, 'that Mrs. Annis was not on the boat, nor was a pistol pointed at her back, nor did the defendant beckon his brother.' These were the chief points. The testimony of the widow when she took the stand for the prosecution.

In summing up his speech Mr. Shay announced the intention of the defence to prove that Thornton Hains exercised only his legal prerogative in preventing his insane brother from doing injury to himself or further injury to others by arresting him, and in preventing others from doing injury to this same brother then in his custody.

When Mr. Shay had finished at noon, after having spoken for two hours, Mr. McIntyre called District Attorney General as the defence's first witness. Mr. Darrin said he had qualified as District Attorney of Queens county on or about January 1, 1906.

"And you were duly elected by the people of this county?" Mr. McIntyre asked.

"I'm not so sure about that," was the reply.

Justice Crane interrupted impatiently. "I will answer for him. The answer is, 'Yes.'"

Mr. McIntyre tried to bring out that an indictment had been found against Capt. Peter C. Hains by the same Grand Jury as returned the indictment against the present defendant, but the objection of Finger S. White, who yesterday took charge of the case, was sustained. Mr. McIntyre also asked the witness when his assistants, White and Dayton, were retained and got answers to this. The Court sustained the objection of Mr. White as to the compensation to be paid these two attorneys.

Eugene N. L. Young of counsel for the defence then was put on the stand to preach the testimony of Fallen, the District Attorney's detective, who testified that Thornton Hains said to him while the coroner's jury was standing by the door to hell and bring him back and kill him all over again if I could." Mr. Young declared that he had seen Fallen start toward the prisoner, had called the attention of Mr. McIntyre and Mr. White to the action, and that the three lawyers got to the prisoner before the detective surrounded him so that it would have been impossible for the latter to escape. The detective was the latter alleged. Mr. Young also testified to the obtaining of the affidavit from Martin Skura and said that he and Mr. Shay specifically told the dense writer boy that they were lawyers for the Hains brothers and that in response to questions the boy made the statements embodied in the affidavit.

When the trial resumed at 2 o'clock, Mr. McIntyre and Mr. Shay will both take the stand to refute Fallen and Mr. Shay also to refute Skura.

Among the things which yesterday's session brought out most forcibly was the interesting intensity of feeling existing between Mr. McIntyre and Mr. White, who will take the brunt of the battle for the prosecution from now on. The Court had to call Mr. McIntyre for leaving of the "Mr." when speaking of Mr. White, and then had to call the latter for giving his opponent the plain title of "McIntyre." Justice Crane told both the "common politeness" would prevail in the trial of the case and that he intended to see that it did.

Outside of Thornton Hains's testimony in his own behalf, which will likely not be given until the defence is well along toward the completion of its case, the greatest interest attached to that of his mother who, it was definitely announced yesterday, would go on the stand to tell of her having committed the Captain, whose mind is alleged to have been weakened, in his brother's care. Mrs. Hains probably will be called early in the week.

The first few minutes of yesterday's session was taken up by the finishing of the prosecution's case. Mr. Darrin called George Bolton, one of his detectives, who testified to searches he had made for John Tonning without success, and Louis Harway, recalled, who gave the dimensions of Annis's boat.

Christmas Showers of Gold Coins.

LENOX, Dec. 26.—There was the largest distribution of gold coin in Lenox on Friday that has been made here at Christmas time. Mrs. John Sloane, Mr. and Mrs. William D. Sloane, Mr. and Mrs. George H. Morgan and Charles Lanier gave out two and one-half, five and ten dollar gold pieces to their employees and to members of their employees' families. More than two thousand dollars in gold was drawn from the Lenox National Bank for this purpose. William D. Sloane has over one hundred men working on his large property, Elm Court.

END OF CENTRE MARKET BATH

MISSIONARY WORK IS DONE AND IT RETIRES.

Since This Private Experiment in Afford- ing to the Poor the Means of Clean- liness the Municipality Has Been Con- verted—Thirteen Public Bathhouses.

The Centre Market baths that the New York Association for Improving the Condition of the Poor has been maintaining since 1891 will close on the last day of this month, its mission justified. Frederick D. Green of the association says that now that the city has fallen in line with the new idea the old Centre Market baths initiated the association feels that it cannot longer maintain the baths, especially under the heavy expense of repairs that would be necessary.

When the association first projected these public baths back in the days when the city of New York did not obligate itself with the cleanliness of its poorer citizens there were many who said that the poorer citizens would not go. It would be easier to drive a horse to water, they thought, than one of the unwashed on the East Side. The association went ahead, cleaned out the building at 9 Centre Market place, installed the baths and threw open the doors with an invitation redolent of soap and charity.

The association was justified in its venture instantaneously. Within the first two months after the baths were opened 10,594 people had been there to wash themselves. They kept on coming until at the end of the first year 59,460 folk had laid down their nickels at the wicket for towels and soap.

There is a great deal of difference between the little to be done at a bathhouse, Centre Market and the tiled and brass fitted municipal baths in East Twenty-third street, say, but the Centre Market institution was the pioneer and the city followed. Eight municipal baths have been built in Manhattan at an outlay of \$2,088,335 since first the association began to afford the means of cleanliness, to \$208,522 has been spent upon the five municipal baths in Brooklyn. Other cities throughout the country have followed the trail blazed by the association.

The closing of the baths in Centre Market place may be a temporary deprivation to the regulars who have been cooling themselves there on hot summer days and warning themselves incidentally in winter, but the association believes that it has done its duty. Other and bigger institutions exist where the same regulars may find themselves at home shortly.

Just one person may benefit, surely will benefit, by the closing of the baths—that one Nelson Hallberg, who has one wooden leg and the other rheumatic. He has always been on the job to act as cashier and has blessed his stars that one of his legs at least is wooden, for being in a bathhouse was bad for rheumatism. He will not have to expose that good leg to the damp any more and the association will take care of him even if he is not to be cashier in a bathhouse.

Alonso Hicks Fatally Injured by a Train.

HIGHLAND FALLS, N. Y., Dec. 26.—Alonso Hicks, superintendent of the Hudson iron mines at Forest of Dean, was fatally injured at Fort McIntyre, N. Y., today by being struck by a West Shore train. Mr. Hicks was waiting at the station to meet J. M. Clark, the company's secretary, who has office at 100 Broadway, New York city. Mr. Hicks's injuries were such that he died an hour after being hit. He was 71 years old. His wife and family reside on Staten Island.

IMPULSE OF DEFAULTER'S WIFE

Led Her to Give Wedding Gifts to Bank He Robbed—She Regrets It Now.

ORANGE, N. J., Dec. 26.—Mrs. Edward B. Towne, Jr., whose husband by means of overdrafts and alleged forgeries became the debtor of the People's Bank of East Orange to the amount of more than \$4,000 before he disappeared and sent word to his employers, the Matheson Lead Company of New York, that he was a defaulter, has given to the bank most of the jewelry she received from her husband as wedding gifts, but now she regrets that she did so. Under advice of counsel she says that the act was a mistake and she now wishes to recover possession of the valuables, which have more worth in her eyes than merely what they will bring in the market.

"When the lawyer (meaning Jerome Dudley Godney, representing the bank) called late Thursday afternoon I gave him all my jewelry," said Mrs. Towne today. "But since then I have been advised that this was unwise. They have attached everything in our home, and while I want to see justice done some of those things are more precious to me as wedding gifts than they can be to anybody else in the world."

"Jack the Tar Spreader."

INDIANAPOLIS, Dec. 26.—"Jack the Tar Spreader" is giving the detective force of this city no end of trouble, and there is not a night but women's expensive gowns are ruined at the theatres. In addition to smearing tar on gowns he drops small balls of it on the floors and they are tramped over the carpets by those who happen to tread on them. Last night a half hundred balls were dropped over the floor of the Grand Opera House, and though six detectives were on the watch, the vandal was not caught.

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